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The concept of the standard of proof in common and continental law

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Abstract: The article examines the concept of the standard of proof in common and continental law, and considers approaches to determining the level of evidentiary force required for a court decision. The author analyzes the development of the doctrine of proof in the Anglo-American and European legal systems, compares the criteria used in civil, criminal and administrative proceedings. Particular attention is paid to such categories as beyond reasonable doubt and preponderance of evidence, which are key to Anglo-Saxon law, as well as the role of judicial discretion and formalized rules of evidence in the continental system. The author identifies the main problems of standardization of evidence, including issues of legal certainty, objectivity and admissibility of evidence. The analysis suggests possible ways to harmonize approaches to the evaluation of evidence in the international context. Special attention is paid to the interaction between the general and continental approaches to the process of evidence, given the growing integration of legal systems and the development of international cooperation in the field of justice. The author analyzes the practice of international judicial bodies, such as the European Court of Human Rights and the International Criminal Court, which play a key role in the development of universal standards for the evaluation of evidence.
Keywords: common law; continental law; court; evidence law; law enforcement; legal consciousness of judges.

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INTRODUCTION

The process of proof is an integral part of justice, determining the validity and legality of court decisions. The differences between the common law (Anglo-American) and continental (European) legal systems are largely due to the approaches to the standards of proof that shape the law enforcement practice of the respective countries. In the common law, courts are guided by precedent decisions and the concept of preponderance of evidence in civil cases and the standard of beyond reasonable doubt in criminal proceedings. Continental law represented by European countries, in particular Germany, is based on formalized criteria of proof and judicial discretion within the legal framework. The European Court of Human Rights (ECHR) plays a special role in this context, as it sets standards for the evaluation of evidence and its application in national jurisdictions through its judgments.

The problem of defining a unified standard of proof remains relevant, as it affects legal certainty, protection of the rights of litigants and the efficiency of court proceedings. Despite the attempts to harmonize evidentiary standards in international law, in particular through the influence of European Court of Human Rights judgments, national legal systems retain their own peculiarities, which makes it difficult to harmonize them. The article analyzes how different legal systems determine the admissibility, sufficiency and persuasiveness of evidence in civil and criminal cases, as well as what approaches are used to evaluate them in court practice.

The study is relevant because the development of law enforcement practice should be based on international experience in evaluating evidence. Modern trends in legal development are aimed at increasing the level of objectivity and fairness of court decisions, which is impossible without a clear definition of the standards of proof. A comparative analysis of the approaches used in the legal systems of England, Germany and the European Court of Human Rights allows us to identify the strengths and weaknesses of each model of proof.

Special attention should be paid to the interaction between the continental legal tradition and the case law approach in the context of evidence. In the common law system, judges play an active role in determining the facts of a case based on their compliance with past precedents.

The continental system follows a more formalized path, where the determination of evidence is guided by logically established legal rules. At the same time, the ECHR case law demonstrates a tendency to establish general standards of proof that have a significant impact on national legal systems (Belova & Peresh, 2023).

The study of law enforcement practice in different countries is important not only from the point of view of theoretical analysis, but also for the development of effective mechanisms of judicial proceedings. Examination of the experience of other countries contributes to the improvement of domestic legislation and judicial practice, which is especially relevant in the context of European integration. This study focuses on the standards of proof in general and continental law enforcement practice. The subject of the study is the peculiarities of establishing and applying these standards in the practice of England, Germany and the ECHR, as well as their impact on legal certainty and efficiency of legal proceedings.

The aim of the study is to provide a comprehensive analysis of the standards of proof in common and continental law, their nature and differences, and to assess the possibilities of harmonizing the relevant methods in the international legal arena. Differences between the continental and common law standards of proof affect the predictability of court decisions and legal certainty, which may negatively affect the authority of the judiciary. The case law of the ECHR, the English and German courts demonstrate significant differences in approaches to proof, but partial unification is possible to improve the efficiency of justice.

1 LITERATURE REVIEW

In order to understand what the standard of proof in civil proceedings is, it is necessary to consider various doctrinal approaches to the interpretation of this concept. Ryabchenko (2020) notes that the standard of proof determines the possibility of completing the consideration of a civil case, provided that certain prerequisites for a decision in favor of one of the parties exist, and establishes the ultimate goal of proof, as well as the possibility of making a decision based on it.

The Anglo-American legal system has developed an approach according to which fact-finding in litigation is generally a matter of probability rather than absolute certainty. This approach considers only those assumptions to be reasonable and verifiable, as to which the court can determine that: it is likely to have occurred, or it is very likely to have occurred, or it is virtually certain to have occurred. Other assumptions cannot be reasonable or supported by experience and knowledge (Ryabchenko, 2020).

Pilov (2024) suggests that the standard of proof is the probability of an event required for a court to consider a circumstance proven. This definition correctly reveals the objective essence of the concept, but it is not complete, as it does not reveal its legal nature. But (2020) determined the standard of proof as the degree of certainty and level of proof required to consider a fact established in a criminal or civil proceeding. Tomarov (2024) noted that the standard of proof is the required level of evidence at which the court finds a fact proven.

Furthermore, Stepanenko (2015) stated that the standard of proof is a criterion for establishing facts based on the evaluation of the evidence presented. The definitions given within this approach all have a common feature. All of them are focused on establishing facts in the course of legal proceedings. There are other interpretations of this concept. Stoyan (2021) noted that standards of proof define the minimum requirements for evidence that must be submitted by the party with the initial burden of proof before the burden shifts to the other party in the case.

The level of evidence is, to some extent, a threshold, serving as a basis for moving from presumptive knowledge to reliable knowledge. This definition should be used with caution, as the level of proof is used to evaluate evidence, not to collect it. The failure of one party to prove the circumstances of the case does not exempt the other party from providing evidence, as this would contradict the essence of adversariality and equality of parties in procedural law.

Sliusarchuk (2017) defined the standard of proof as a criterion for the sufficiency of evidence in common law countries. This approach reveals that the criterion belongs to the Anglo-Saxon legal system, but does not provide a complete understanding of the concept, as it does not specify who determines the sufficiency of evidence and the purpose of establishing this sufficiency. The question of who determines the sufficiency of evidence is important, since the person providing the evidence may consider it sufficient to prove a fact, but the court may find it insufficient.

The order of proof should be based not on the amount of evidence collected, but on its admissibility, reliability and sufficiency to establish that a fact is more likely than not – the fact is more likely than otherwise (Verkhovna Rada of Ukraine, 2024). Samilyk and Ohneviuk (2022) provided the most complete definition of the standard of proof, stating that the standard of proof is a set of criteria for evaluating evidence used by courts in cases of a certain category, which allow determining the sufficiency of evidence of the required level of reliability for a particular legal conclusion. There are generally two main standards of proof: in civil proceedings, it is the balance of probabilities, or preponderance of the evidence in the United States, and in criminal proceedings, it is the standard of proof beyond reasonable doubt.

The third standard of proof is the standard of clear and convincing evidence, although it is recognized only by American lawyers and is not popular in English case law. The research of these scholars thus covers a wide range of issues related to evidence in Ukrainian criminal procedure, including standards for evaluating evidence, admissibility and relevance of evidence, the impact of international standards, subjective aspects of evidence evaluation, and other important aspects of criminal proceedings.

2 MATERIALS AND METHODS

The study covers several key stages, each of which focuses on a detailed analysis of the standard of proof under common and continental law. The first step is the theoretical analysis of the standard of proof, which includes consideration of its conceptual foundations and role in the law enforcement process in various legal systems, including common and continental law. At this stage, the theoretical foundations and conceptual approaches to defining the standard of proof as a key element of the legal system can be examined. The methodological design of the study is shown in Figure 1.

The next step is to substantiate the principles and criteria for applying the standard of proof. In this context, the main principles and criteria that determine the requirements for evidence in court proceedings are examined, and their impact on law enforcement practice in common law and continental law systems is analyzed. An important step is a comparative analysis of the standard of proof in these legal systems. This includes focusing on the

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significant differences in approaches to the standard of proof, such as the role of the judge in the evidentiary process and the participation of lawyers, comparing the Anglo-Saxon and continental legal systems (Skwarcow, 2024).

The article focuses on the effectiveness of law enforcement as a result of the standard of proof. The article examines the impact of the changing practice of applying the standard of proof in common and continental law on the effectiveness of law enforcement, the quality of court decisions and the administration of justice.

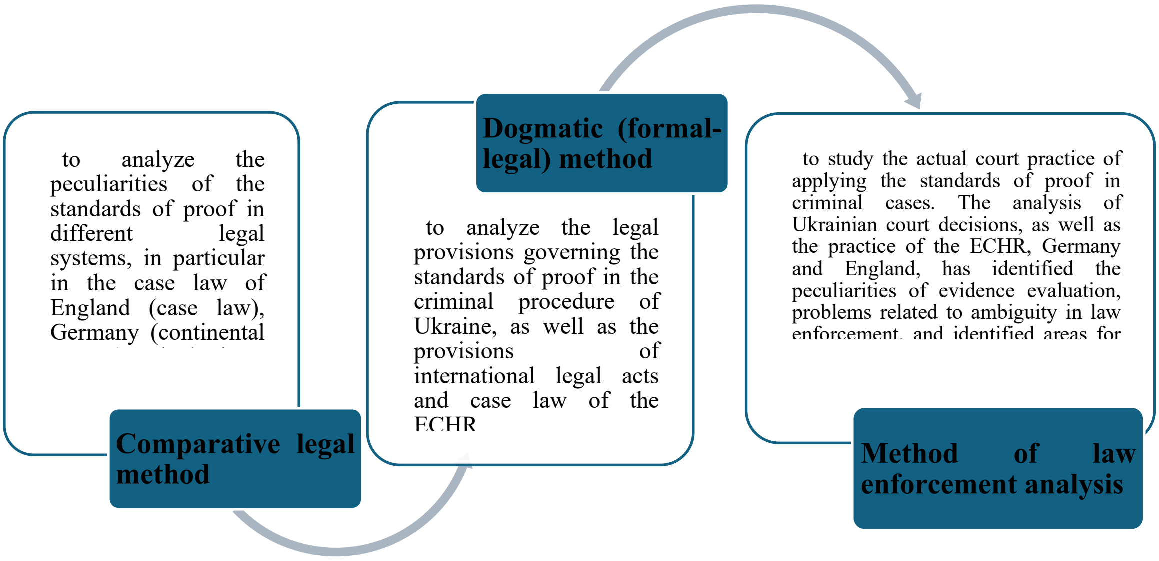

Figure 1. Methods and materials of the study

Source: created by the author based on Samilyk and Ohneviuk (2022)

The dynamics of the development of the standard of proof concept is followed by an examination of how international legal standards, in particular the European Convention on Human Rights and other international agreements, contribute to the development of this concept in national legal systems. Moreover, a model for improving the standard of proof in law enforcement is developed, which offers a comprehensive approach to improving the application of this standard in legal practice, aimed at increasing the efficiency of justice and achieving a balance between the rights of the parties in litigation.

3 RESULTS

The standard of proof is an important tool in the legal system that determines how evidence should be evaluated in a court proceeding. The definition and application of the standard of proof is essential to ensuring fairness in a legal system, as it regulates the extent to which a court or other law enforcement agency must believe or doubt the evidence presented. The standards of proof are specific to each legal tradition and differ significantly in the context of common law and civil law (Sliusarchuk, 2017).

Common law is mostly prevalent in English-speaking countries such as the United Kingdom, the United States, Canada and others, and is based on judicial precedents and is largely guided by the principle of stare decisis, which means that courts must adhere to previous court decisions. The standard of proof in this context plays an important role in ensuring the fairness and accuracy of court decisions. Court practice, evidence, proof, and standards of proof are complex and interrelated legal categories that form the basis for the administration of justice in national law enforcement systems. The analysis of these concepts in comparison with the position of the ECHR, the legal systems of Germany and England reveals differences and commonalities, and offers opportunities for improving the standards of proof in the international context (Schweizer, 2016).

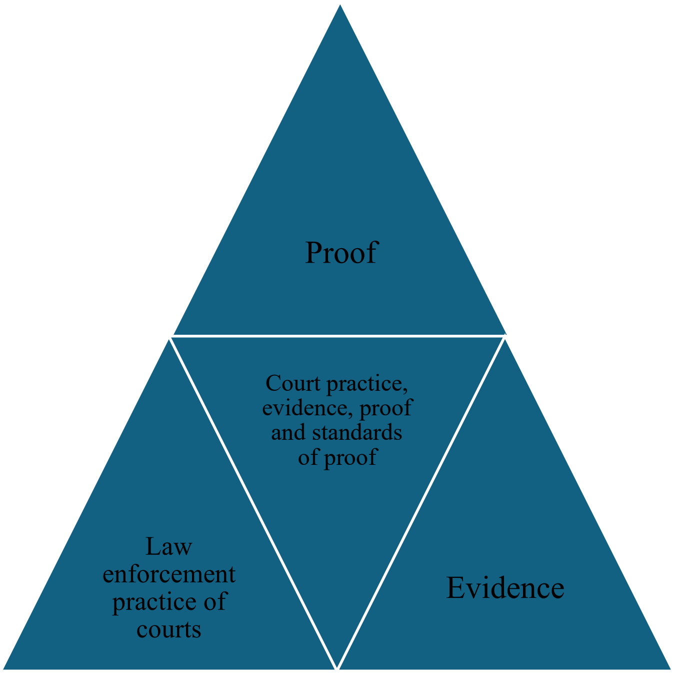

Figure 2. Interrelated legal categories

Source: created by the author.

Judicial practice of courts is the process by which courts apply the rules of law to specific facts in the course of case consideration. It includes various procedural steps, such as gathering evidence, evaluating it, deciding on the admissibility of evidence, and formulating a decision based on that evidence. The standard of proof in judicial practice determines how important and convincing the evidence must be for the court to rule in favor of one of the parties.

Evidence is factual data that confirms or refutes the existence of certain facts that are relevant to the case. It can include written documents, testimony, objects, and other types of information. Evidence is the process by which parties attempt to prove their claims through the presentation of relevant evidence in a court proceeding. The standard of proof determines the level of proof required to reach a decision in court.

Different legal systems may have various criteria and approaches to the standard of proof:

- In criminal law, the standard of proof is the highest: the prosecution must prove the defendant's guilt beyond a reasonable doubt.

• In civil law, the standard of proof may be lower and it is sufficient to prove the existence of evidence in favor of the majority or beyond a reasonable doubt.

Law enforcement can be viewed as a process in which courts, authorities, and other legal entities interpret and apply legal provisions to specific situations that arise in real life. Implementation of law is an important mechanism for the realization of legal norms, as well as the main way to ensure fairness in judicial practice (Gladenko, 2013). The ECHR is a body that supervises the observance of human rights in the territory of the Council of Europe member states. The ECHR's case law is focused on the issue of evidence and the application of standards of proof in the field of human rights. The Court insists that member states under its jurisdiction comply with such rights as the right to a fair trial, the right to defense, equality of arms and transparency of the judicial process. (Omelchuk et al., 2022).

The ECHR recognizes the importance of adhering to the proper standard of proof, especially when it comes to the rights of criminal defendants (Oliinyk et al., 2022). The court emphasizes that evidence must be gathered by lawful means and take into account the rights of individuals, including the rights to confidentiality and protection from unwarranted interference. The standard of proof in German law is also determined by the type of case (civil or criminal). Germany is known for its detailed and structured approach to evidence. German criminal law emphasizes the principles of "In dubio pro reo" (in case of doubt in favor of the accused) and the need to prove guilt beyond a reasonable doubt. German case law has a clearly defined mechanism for collecting and evaluating evidence, as well as extensive requirements for the evidence base in court cases.

English law is based on precedent, and evidence is an important part of law enforcement, where courts look to previous court decisions as guidelines for deciding new cases. The English system requires a high standard of proof, especially in criminal cases where the prosecution must prove guilt "beyond a reasonable doubt". In addition, English law allows for the use of mechanisms such as expert testimony or additional evidence through admissibility, which is determined by the court (Pavlyshyn & Slyusarchuk, 2018).

The standard of proof "beyond a reasonable doubt" is the most widely used in the common law system. This is typically applied in criminal cases and requires judges and juries to be convinced of the defendant's guilt to the extent that there is no reasonable doubt as to their involvement in the crime. This high standard is established to prevent the wrongful punishment of innocent persons, given the serious consequences of criminal convictions.

In common law, the prosecution has the burden of proof in the first instance. The prosecutor is obliged to prove the guilt of the defendant beyond any reasonable doubt. The defendant is not obliged to prove his or her innocence, but instead must challenge or discredit the evidence presented by the prosecution. This standard is crucial in criminal trials, where the prosecution must prove the fact of a crime with such certainty that there is no reasonable doubt as to the defendant's guilt. In common law, evidence is evaluated individually, allowing each judge or jury to make its own judgment as to its weight and relevance. This approach provides a higher degree of confidence in the conclusions drawn, increasing the validity and correctness of the verdict (Stoyan, 2021).

Continental law, which is common in many European countries such as France, Germany, Italy and others, is based on written laws and codes. Continental law systems place significant emphasis on the rules and principles enshrined in legislation, and courts have greater control over the evidentiary process than judges in a common law system. Continental law also has a standard of proof, but it may be of a slightly different nature compared to common law. One of the main standards is the “preponderance of the evidence” or “balance of probabilities” standard, which is typical for civil cases (Kroitor, 2023). Criminal law may also use a high standard similar to the “beyond a reasonable doubt” standard, but there are other aspects. Civil cases in the continental legal system are subject to the preponderance of the evidence standard. The standard means that one of the parties must prove its position (Pavlyshyn & Slyusarchuk, 2018).

A higher standard than “beyond a reasonable doubt” is applied only in criminal cases. Continental law may give more weight to evidence in the context of assessing its completeness and credibility than in the common law system. This allows the judge, when considering a case, to focus on the various circumstances of the case, to use the evidence in a complex and to assess its objectivity, taking into account the existing rules and provisions of the law. Continental legal systems often use the inquisitorial model, where the judge has a more active role in the process of proof, including the collection of evidence. Judges may therefore have a greater role in deciding whether the evidence was sufficient to prove the case. The standard of proof in the enforcement process is an important element that helps law enforcement agencies make informed decisions.

The application of the standard of proof in the context of different legal traditions determines the probability that the court will rule in favor of one of the parties. Standards of proof ensure that the rights of individuals are adequately protected. In criminal cases, it is important that the prosecution cannot easily prove a person's guilt without substantial evidence, which minimizes the likelihood of wrongful convictions. Criminal cases typically require a higher standard of proof ("beyond reasonable doubt"), as the outcome can lead to serious consequences for the accused. Civil cases can be more flexible and focus on "beyond a reasonable doubt" (Stepanenko, 2015).

The main difference between the standards of proof in common law and continental law is not only a different approach to the burden of proof, but also the role of the judge in the process. In the common law system, judges are limited to assessing the evidence submitted by the parties, while in continental law they can actively participate in the collection of evidence, which changes the nature of the process itself. Despite these differences, it can be said that both approaches are aimed at ensuring fair justice, while each standard of proof has its own specific features that meet the requirements of a particular legal system.

The evolution of criminal justice in continental Europe has significant differences from the process of its development in England and the United States. Continental legal systems are dominated by the inquisitorial (investigative) principle. The role of the court is not limited to the function of an arbitrator. It is an active participant in the process, conducting proceedings to establish the truth. In the course of its development, continental justice has changed significantly, acquiring adversarial features. This applies, in particular, to the introduction of jury trials in many countries (including Ukraine), although it should be noted that jury trials have not become widespread on the continent, and their use has its own specifics in different jurisdictions. The expansion of adversarialism can also be observed in Ukrainian criminal procedure, where adversarialism is enshrined in the Constitution of Ukraine as one of the basic principles.

The expansion of adversariality in Ukrainian criminal proceedings can be seen in the granting of additional rights to participants in the proceedings, legislative regulation of adversarial procedures at various stages of the proceedings and other innovations. Despite the significant evolution towards adversarialism, criminal proceedings in continental Europe (including Ukraine) retain traditional inquisitorial elements, including the subjective nature of evidence evaluation. The conclusions regarding the assessment of evidence in Anglo-Saxon and continental jurisdictions differ significantly.

Common law systems apply objective standards of proof based on an assessment of the likelihood of various scenarios. Continental countries use the category of "internal conviction", which is based on the judge's personal belief in the truth of a particular fact. The criticism of the continental approach to internal conviction by American lawyers is that this principle can be applied in criminal cases, but not in civil disputes, as it may lead to a bias in favor of the defendant.

The use of the category "internal conviction" has its own psychological justification, however. Assessment of evidence by the subjects of proof, especially lay persons, such as jurors, is based on their knowledge and life experience, which allows them to draw conclusions that seem most convincing and credible. This means that the continental subjective standard of internal conviction adequately reflects the real mechanism of evidence evaluation. This means that the continental subjective standard of internal conviction adequately reflects the real mechanism of evidence evaluation. The question arises: are the Anglo-Saxon objective standards of proof merely theoretical constructs that have no real meaning? The answer to this question is given by the German scientist Engel (2009), who, in an experiment, found that jurors instructed according to stricter standards made higher demands on the evidence supporting the accusation.

Thus, to convict a defendant under the "beyond a reasonable doubt" standard, it is necessary to provide much stronger evidence than under the "balance of probabilities" standard. Engel (2009) concluded that the standard of proof has not only a descriptive function, but also affects unconscious information processing by setting the level of requirements for plausibility of conclusions. The general conclusion is that the subjective continental standard of proof is correct for any jurisdiction, and the objective standards in Anglo-Saxon legal systems serve to form the appropriate level of requirements for evidentiary strength.

Continental law can be improved by integrating elements of objectivity into the evaluation of evidence (Engel, 2009).

Standards of proof in the case law of the European Court of Human Rights (ECHR) are an important aspect in the context of international jurisdictions. The Court actively uses this concept when considering cases on compliance with the requirements of Article 6 of the European Convention on Human Rights, determining whether the required level of proof or standard of proof has been met, rather than examining whether the truth has been established (Verkhovna Rada of Ukraine, 1950). The European Court's case law generally applies the "beyond reasonable doubt" standard (European Court of Human Rights, 1978; 2011). It should be noted that this approach has been criticized by the ECHR judges themselves, and also has certain peculiarities compared to its application in Anglo-Saxon countries, as Ratushna (2014) has written in detail in her research.

The peculiarities of applying this standard are important not only for understanding how it functions in the ECHR case law, but also for its adaptation in Ukrainian criminal proceedings. These peculiarities can be identified through the principles of the "beyond reasonable doubt" standard, although it should be noted that it would be more correct to call them rules or features rather than principles, since they are not always observed in the ECHR case law, although they are used in Anglo-Saxon legal systems.

The first principle of the standard is that the burden of proof in the legal systems in which it is applied lies with the prosecution, and the accused is not required to prove their innocence. In the ECHR case law, this principle is not realized, as the provisions of the Convention do not impose the burden of proof on the applicant, which often leads to its transfer to the respondent state. The second principle concerns the right of the accused to silence, which avoids the possibility of self-incrimination and ensures that his silence is not interpreted against the accused. According to the Convention, the government of the defendant state is not able to use the defendant's silence as evidence, and the lack of assistance from the government may result in a shift in the burden of proof to the state.

The third principle is that national courts should use the most appropriate evidence for the case. The ECHR allows the use of any evidence, even those that may be inadmissible to the courts of the Anglo-Saxon legal system, which greatly complicates the process of evaluating evidence. Therefore, the ECHR's position on the "beyond reasonable doubt" standard of proof differs significantly from the approaches used in Anglo-Saxon countries.

The following principles should be taken into account when implementing an objective standard of proof in Ukraine. They are already regulated by the national criminal procedure legislation, which confirms the need to apply the "beyond reasonable doubt" standard in criminal proceedings. The European Court makes decisions based on a different standard of proof - the "balance of probabilities", which requires a lower degree of certainty and is satisfied on the basis of the probability of the facts. This is used to resolve civil cases in Anglo-Saxon countries, where the relevant position is assessed on the principle of "more likely than not" (Sakara, 2022).

The case of Labita v. Italy (European Court of Human Rights, 2000) states that decisions should be made on the basis of the evidence presented. It is worth noting that domestic courts sometimes misuse the "beyond reasonable doubt" standard, for example, when deciding on preventive measures. Ukrainian law requires reasonable suspicion to be sufficient for a preventive measure, which is a lower standard than "beyond reasonable doubt".

The comparative legal analysis of the specifics of evidence evaluation in different legal systems and the case law of the European Court of Human Rights will help to identify, regulate and properly implement the standards of evidence in national criminal proceedings. This will contribute to the formation of a unified approach to making procedural decisions and performing procedural actions by all participants in the evidence at different stages of criminal proceedings. As a result, they will be able to clearly understand the requirements of the law regarding the grounds for making decisions and taking actions, which, in turn, will increase the efficiency of evidentiary activities (Barnabishvili, 2023).

The absence of an "objective" standard of proof makes it difficult for higher judicial, investigative and prosecutorial authorities to correct errors. How can a higher court establish, for example, that a judge did not make a decision based on his or her "inner conviction"? And if such a conviction existed, on what grounds can the decision be reviewed? At the same time, for example, in the United States, a jury verdict can be set aside if the court finds that no reasonable jury could have reached such a decision given a certain standard of proof (Lytvyn, 2016).

The introduction of objective standards of proof does not contradict the principle of free evaluation of evidence according to the judge's own conviction. This will not be more restrictive than the rules of admissibility of evidence or the establishment of evidentiary presumptions by law. Each subject of proof (including a judge) must be convinced to make a decision that they have correctly evaluated the evidence based on a specific standard and other objective rules of evidence. The internal conviction that a certain fact has been established with absolute certainty is virtually impossible in most criminal cases.

Table 1. The main differences between the standards of proof in common and continental law

Criterion	Common law (Anglo-Saxon system)	Continental law
Approach to evidence	Oriented toward judges, who play a passive role in collecting evidence.	Judges are actively involved in gathering evidence and assessing its reliability.
Role of the judge	Judge acts as an arbitrator, evaluating the evidence provided by the parties	Judge is an active participant in the process and can initiate the collection of evidence
Type of standard of proof	Preponderance of the evidence	Beyond a reasonable doubt
Definition of the standard of proof	The standard is set through court practice and precedents	The standard is formulated in legislative acts and the civil code
Degree of evidentiary strength	Evidence is assessed based on the judge's personal conviction.	Evidence is assessed more formally, in accordance with legal requirements.
Role of the lawyer	A lawyer plays a crucial role in collecting and presenting evidence.	A lawyer is more focused on the legal substantiation of evidence.
Collection of evidence	Evidence is collected by the parties to the proceedings, and the court may rarely intervene.	The court actively facilitates the collection of evidence, in particular, it may commission experts.
Presumption of innocence	There is a strong presumption of innocence, but the verdict is based on evidence.	The presumption of innocence is preserved, but the assessment of evidence is more formalized.
Role of precedents	Precedents are very important and their impact on the legal process is significant.	Precedents are less important and legislative acts are the main source of law.

Source: created by the author based on Stoyan (2017).

The standard of proof determines the level of persuasiveness of evidence required for a court to rule in favor of one of the parties in a legal proceeding. Common law and continental law legal systems have significant differences in their approaches to the application of the standard of proof, in particular in the principles and criteria that determine its application.

Common law (Anglo-Saxon) systems usually precedent to determine the standard of proof. The basic principle is "preponderance of the evidence", which means that the party presenting the evidence must show that its version is more likely than the opposite. It is important that in such systems, the judge has a less active role in the process of proof. The judge mainly acts as an arbitrator, controlling the correctness of the procedures and ensuring that the rights of the parties to the process are observed (McBride, 2010).

Continental law systems based on written law (e.g., in Europe) have a more formalized standard of proof, often based on a "balance of probabilities" system. Judges in such systems may be active participants in the evidentiary process and have more influence on the collection and evaluation of evidence. The continental legal system also pays more attention to the formalized collection of evidence and the accuracy of its verification, and the principle of ensuring the rights of the accused or plaintiff plays a special role.

The main criteria for applying the standard of proof include some aspects. The common law system emphasizes the probability that the evidence presented is credible as the main criterion for the court. In continental systems, much attention is also paid to the admissibility of evidence, i.e. its compliance with established rules and regulations. The common systems place great emphasis on the persuasiveness of evidence, in particular, the extent to which it can change the balance of probabilities in favor of one of the parties. The parties have the right to present counter-evidence in both common law and civil law, but in civil law systems this right may be limited by procedural rules.

There are significant differences in approaches to the standard of proof in the Anglo-Saxon (common) and continental legal systems. The most significant differences relate to the participation of the judge in the evidentiary process and the role of lawyers (Samilyk & Ohneviuk, 2022). The standard of proof in common law systems is often based on the "preponderance of the evidence" principle. The judge has a more limited role and the process of proof is more adversarial. Lawyers play a crucial role in presenting evidence and arguments, and their task is to maximize the probability of proving their position by presenting sufficient evidence.

The standard of proof in continental legal systems is determined by the balance of probabilities, but the judge also plays a significant role in the collection and evaluation of evidence. The judge actively intervenes in the process, helping to determine the necessity and relevance of evidence. Lawyers have more limitations in gathering evidence, as courts are often required to initiate the examination of evidence themselves (Table 2).

Table 2. Comparison of the participation of judges and lawyers in the process of proof

Factor/Role	Common law (Anglo-Saxon system)	Continental law (European system)
Participation of the judge in the process	Minimal judicial involvement, arbitration role.	Active role of the judge in collecting and evaluating evidence.
Use of evidence	Importance of persuasiveness and probability.	Importance of accuracy and admissibility of evidence.
Role of lawyers	Lawyer has a significant role in presenting evidence and evaluating it.	Lawyers are limited in the role of gathering evidence, the court has more control.
Procedure of proof	Adversarial process, the party submits evidence.	Formalized process, the court determines the order of presentation of evidence.

Source: created by the author based on Tomarov (2024).

In general, the difference between these systems lies in the role of the judge, who in common law systems is a more neutral arbiter, while in continental systems the judge is a more active participant in the process of proof. The “preponderance of the evidence” (or “balance of probabilities”) is the most common standard of proof in civil litigation. This standard focuses on the amount of evidence presented by each party, with both parties having an equal opportunity to present evidence. In domestic litigation, both parties must substantiate the facts they use to support their claims and defenses, and the court determines which facts are relevant and admissible. This principle was upheld by the Supreme Court of Ukraine in Resolution No. 645/5557/16-ц (Supreme Court of Ukraine, 2022).

The Supreme Court of Ukraine has consistently emphasized the importance of applying the standards of proof guaranteed by procedural law in its rulings, emphasizing that the principle of adversarial proceedings ensures a comprehensive investigation of the circumstances in civil proceedings. This regulation allows for the burden of proof to be placed on the parties, but does not oblige the court to consider the fact referred to by a party as proven. The circumstance must be proven in such a way that its probability is greater than the probability of the opposing party. Thus, a certain circumstance is considered proven until the other party refutes it (this is the concept of negative evidence), as otherwise the adversarial principle becomes irrelevant (Supreme Court of Ukraine, 2020; Grover, 2015).

The preponderance of the evidence standard is commonly interpreted as “more likely than not” or “balance of probabilities” and requires the court to be more than 50% convinced that a statement of fact is true. This interpretation of the standard by some judges and juries is incorrect as a matter of law. In the case of Cipollone v. Liggett Group, the U.S. Court of Appeals for the Third Circuit questioned the attempts of some courts to use simple statistics to determine causation (U.S. Supreme Court Center, 1992). The court noted that jurors do not determine the probability of injury at 50% or more, but formulate their decision in words, not numbers (Tomarov, 2024).

In the United States, the “preponderance of the evidence” standard is not considered as a matter of mathematical probability, but as a matter of conviction in the truth of the fact in question. According to the English law, Lord Denning in Miller v. Ministry of Pensions defined the “balance of probabilities” standard as follows: if the evidence allows the court to state that a fact is more likely than not, the burden of proof is considered to be met, but if the probabilities are equal, it is not sufficient for proof (Scribd, 1947).

The standard of “preponderance of the evidence” is also interpreted in the U.S. Federal Jury Instructions, which states that this standard means a belief that a fact is more likely than not based on a comparison of the evidence. It does not require proof with absolute certainty, as absolute certainty is rarely possible. The degree of persuasion in civil cases is based on the difference between the probability that an event occurred and the probability that it did not. This standard in most cases allows us to conclude that a fact is true if it is more likely than not, and mathematically, the probability of such an event can be determined at 51%. The higher standard of proof, “beyond a reasonable doubt,” is used in criminal cases and requires a 99% probability. An intermediate standard is probably 75-85% (Craig & de Búrca, 2020).

The standard of proof in civil and criminal cases is not clearly distinguished in continental European law, unlike the common law system. In the classical sense, the standard of proof in the continental legal system is not based on probability, and courts evaluate evidence based on their internal conviction. The Code of Criminal Procedure in France states that judges are not required to report on how they came to a conclusion, but must simply be convinced of the intrinsic truth of the evidence. Domestic civil procedure describes the standard of proof in terms of the sufficiency of evidence to enable the court to determine whether certain circumstances are present or absent (Verkhovna Rada of Ukraine, 2024).

The approaches to the evaluation of evidence in the Anglo-Saxon and continental legal systems differ, in particular due to different levels of subjectivity and probability, but they nevertheless agree that a decision cannot be based solely on the judge's internal conviction. This points to the process of unifying approaches to the evaluation of evidence in different legal systems. The standard of proof in Ukraine still needs to be specified at the regulatory level, as its application remains at the level of doctrine, but the need for its development is obvious for the proper administration of justice (Vertegel & Posashkova, 2020; Titov, 2005).

The dynamics of the development of the standard of proof concept in the light of international legal standards is an important aspect in the context of the evolution of national legal systems. International legal norms, including the European Convention on Human Rights and other international agreements, have a significant impact on the development of this concept, contributing to the harmonization of practices in different jurisdictions. The principle of fair trial, which provides each party with equal opportunity to present evidence and defend its rights, is a key element in this process. The European Convention on Human Rights, including Article 6, enshrines the right to a fair trial, which provides for the requirement that each party be given the opportunity to present its evidence and convince the court of the credibility of its allegations (Ishchenko, 2009).

The influence of international standards also means that courts must evaluate evidence not only in terms of national procedural rules, but also in accordance with generally recognized legal principles that promote objectivity and fairness. International practice emphasizes the concept of presumption of innocence, which obliges courts to make decisions only on the basis of proven facts that correspond to high standards of proof.

As a result, international legal standards not only formulate general requirements for standards of proof, but also ensure their implementation through mechanisms of international control and accountability. International bodies, such as the European Court of Human Rights, play an important role in the development of the doctrine of standards of proof by providing interpretive explanations and recommendations for their application at the national level (Rybalkin & Nosenko, 2021).

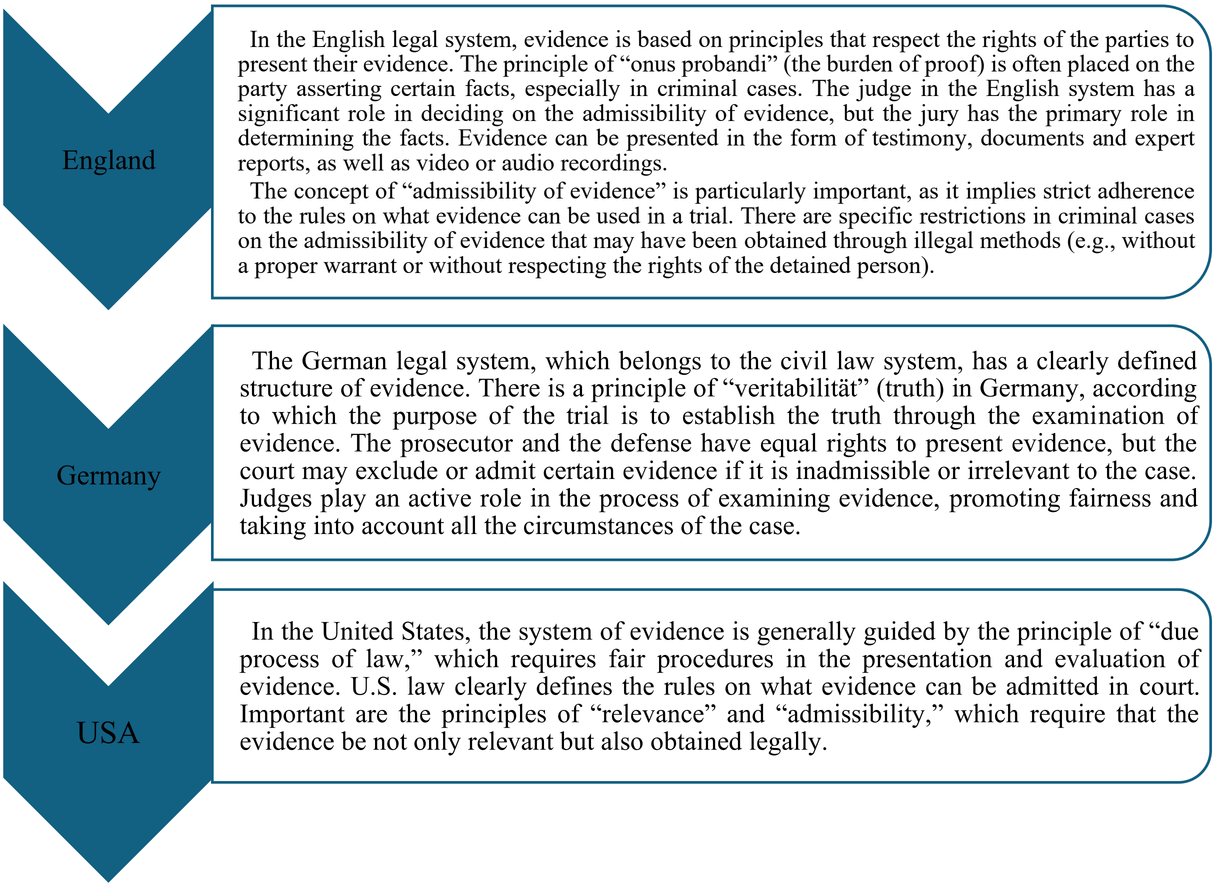

Figure 3. Evidence in the legal systems of England, Germany and the United States
Source: created by the author.

The creation of a model for increasing the level of evidence in law enforcement involves the development of a comprehensive system that combines subjective and objective approaches to the evaluation of evidence and is aimed at improving the efficiency of justice and ensuring the balance of the parties' rights during the judicial process. This model is based on the general picture of modern approaches, taking into account the experience of legal systems of common (Anglo-Saxon) and continental law and international legal principles, in particular the provisions of the European Convention on Human Rights.

The key element of this model is the standardization of criteria for evaluating evidence, which allows determining the required level of evidence to recognize a fact as established. It should ensure the application of consistent procedures for verifying the admissibility, completeness and quality of evidence. This involves developing a methodology that allows the court to objectively compare the evidence provided by the parties and determine whether the significance of the evidence of a particular fact exceeds the established threshold, which is consistent with the principle of "more likely than not" (Averyanov et al., 2018).

Implementation of mechanisms that guarantee equal opportunities for both the plaintiff and the defendant to present evidence is important to ensure the balance of the parties' rights. This means that each party should have access to the same procedural tools, and the judicial system should ensure transparency and predictability of the evidence procedures. Moreover, it is necessary to develop internal control and monitoring mechanisms that will allow identifying and correcting shortcomings in the application of evidence standards in actual court proceedings.

Special attention should be paid to the use of modern digital technologies that will automate the analysis of evidence, improve access to information and reduce the influence of subjective factors in the evaluation of evidence. The integration of such technologies can provide a more objective and systematic approach to evidence, which, in turn, will improve the quality of court decisions (Vertegel& Posashkova, 2020).

Therefore, a comprehensive approach to improving the standard of proof should include the development of uniform criteria for evaluating evidence, the introduction of modern technological solutions and the establishment of effective control mechanisms. This approach will optimize the process of proof, ensure a balance between the rights of the parties and, ultimately, increase the overall efficiency of justice, which is essential for a modern legal system capable of adapting to the requirements of the times and integrating the advanced international experience.

4 DISCUSSION

The study showed that the concept of the standard of proof differs significantly in common law and continental law systems. The case law of the ECHR, the judicial systems of Germany and England demonstrate different approaches to the assessment of evidence, admission of evidence to the case as well as whether it is sufficient to make a court decision. The common law system sets the standard of proof in criminal cases as "beyond a reasonable doubt."

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The countries where this system is in place (the United States and the United Kingdom) have the entire burden of proof on the prosecution, and the presumption of innocence is complete. The English case law shows cases where judges take into account not only the evidence, but also the conditions under which it was obtained, compliance with procedural guarantees and the likely impact of the evidence on the fairness of the judicial proceedings.

Common law criminal proceedings are subject to the standard of proof "beyond a reasonable doubt". Countries that follow this system (in particular, the United Kingdom and the United States) have the burden of proof entirely on the prosecution, and the presumption of innocence is absolute. According to the English practice, judges consider not only the evidence itself, but also the context of its receipt, compliance with procedural guarantees and the possible impact of the evidence on the fairness of the judicial process.

There are more flexible standards of proof in the civil law system, depending on the specific stage of the proceedings and the category of the case. The principle of "freie richterliche Beweiswürdigung" (free judicial assessment of evidence) is applied in Germany, which means that the judge has the freedom to interpret evidence, provided it is relevant, reliable and admissible. This approach avoids a formal approach to the evaluation of evidence, but at the same time creates risks of subjectivity in court decision-making.

Analyzing the Ukrainian practice, it can be concluded that the national criminal justice system tends to follow the continental approach, but gradually integrates certain elements of the common law system. In domestic criminal proceedings, the main standard of proof is the sufficiency and correlation of evidence to prove the guilt of the accused. Judges are guided by their inner conviction and evaluate the evidence in its totality, which is similar to the approach of the German legal system.

An important aspect of the study was the comparison of Ukrainian evidence practice with the position of the ECHR. The Court's judgments have repeatedly emphasized the importance of the presumption of innocence and the requirement that the prosecution prove a person's guilt beyond a reasonable doubt. The analysis shows that in Ukrainian judicial practice there are cases when courts pass guilty verdicts based on insufficiently substantiated evidence or without proper assessment of its reliability.

The study also confirmed that national standards of evidence are in the process of being improved under the influence of international practice. The adoption of elements of the Anglo-Saxon system, such as stricter requirements for the admissibility of evidence, could contribute to increasing the level of legal certainty in the criminal process in Ukraine.

The effectiveness of the free evaluation of evidence, which allows judges to make informed decisions based on the specifics of each case, must be preserved. The results of the study thus demonstrate the need to further improve the standards of proof in Ukraine, taking into account international experience. The best way to reform may be to harmonize the approaches of continental and common law with a clear definition of the criteria for evaluating evidence, which will ensure a balance between procedural fairness and the efficiency of legal proceedings.

The more flexible nature of the civil law system allows judges to exercise discretion in deciding whether the evidence is sufficient. This is useful in situations where the evidence presented is complex or where different types of evidence need to be considered. The disadvantage of not having a precise, strict standard of proof is that it makes it difficult to have consistent and predictable court decisions. In some cases, personal interpretations of evidence can lead to verdicts that appear to favor one side over the other, and thus undermine confidence in the impartiality of the proceedings. This is especially true in serious cases, such as criminal or human rights cases.

The two legal systems have their own strengths and weaknesses in terms of evidentiary standards. The common law system has a clear and defined approach to the evaluation of evidence, which protects defendants from being unjustly convicted. This system may not be well suited to cases where the evidence is less clear or less unambiguous in its interpretation. The common law system, by contrast, is rigid and leaves little room for judges to make decisions based on the totality of the circumstances. This rigidity carries with it the risk of inconsistent judicial decisions, especially in legal systems where judicial discretion is not properly regulated. The challenge for most legal systems, including Ukraine's, is to find a balance between these two legal systems, taking advantage of the strengths of each and minimizing the weaknesses.

CONCLUSIONS

The study allows formulating a number of conceptual conclusions regarding the standard of proof in common and continental law, taking into account the comparative analysis of the ECHR case law, and the judicial systems of Germany, England and Ukraine. The author establishes that standards of proof are an important element of criminal procedure which determines the level of evidence required to make a court decision.

The common law adheres to a high standard of proof, especially in criminal proceedings, where the principle of "beyond reasonable doubt" is applied. This ensures reliable protection of the presumption of innocence, as it requires the prosecution to prove guilt with the greatest possible conviction. In the case law of England and the United States, there is strict adherence to this standard, which contributes to the fairness of the process and the protection of individual rights, but at the same time complicates the proof in particularly complex criminal cases.

The continental legal system, especially the German one, operates on the principle of "free evaluation of evidence by the judge", which provides for flexibility in case consideration. This approach can lead to subjectivity and ambiguity in law enforcement, despite its adaptability to different circumstances. In German criminal proceedings, there is a rule that the judge must be internally convinced of the guilt of the accused, which brings the German approach closer to the principle of proof "beyond a reasonable doubt", but is not identified with it.

Ukraine's system of evidence is mainly based on the continental model, but in practice it is characterized by some uncertainty and sometimes a lack of clearly defined criteria for evaluating evidence. Ukrainian law provides that the prosecution must prove a person's guilt based on a combination of sufficient, relevant and admissible evidence, but an analysis of case law shows that courts do not always apply the principle of proof beyond a reasonable doubt to the fullest extent. This can lead to unreasonable decisions, especially in cases where the evidence is contradictory or insufficiently substantiated.

The European Court of Human Rights (ECHR) plays a key role in establishing common standards of proof for the countries that are parties to the Convention for the Protection of

Human Rights and Fundamental Freedoms. Its judgments contain fundamental provisions on the assessment of evidence and the observance of human rights in criminal proceedings. The Court emphasizes the need to ensure that verdicts are reasonable, that the parties are equal in their proof, and that no accusatory bias is permitted.

The analysis shows that an important area for improving the criminal procedure of Ukraine is further harmonization of the standards of proof in accordance with the best practices of common and continental law. This requires the establishment of clear criteria for the sufficiency of evidence at the legislative level, the development of a methodology for assessing its relevance and admissibility, and the introduction of effective mechanisms for judicial control over compliance with the principle of proof beyond a reasonable doubt. Improving these approaches will help to increase the level of legal certainty, predictability of court decisions and compliance with the principles of fair trial.

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